

Scottish Public Pensions Agency
The Teachers' Pension Scheme (Scotland) (Amendment)
Regulations 2022
16 January 2022

1. The NASUWT welcomes the opportunity to comment on the Scottish Public Pensions Agency (SPPA) Teachers' Pension Scheme (Scotland) (Amendment) Regulations 2022.
2. The NASUWT – The Teachers' Union – represents teachers and headteachers in Scotland and across the United Kingdom.

GENERAL COMMENTS

3. The Regulations which are currently subject to SPPA consultation have the effect of closing the Scottish Teachers' Superannuation Scheme (STSS) (the final salary or legacy scheme) on 31 March 2022. This is one aspect of HM Treasury's remedy to the unlawful discrimination in the transitional protections in UK public service pension schemes identified by the courts in the McCloud/Sargeant Judgment, also known as the McCloud remedy.
4. The NASUWT responded in detail to HM Treasury's consultation on the McCloud remedy in the summer of 2020 and the Union does not intend to repeat in full its response to the Treasury's consultation when

commenting on the SPPA's proposed amendments to the STSS and Scottish Teachers' Pension Scheme (STPS) Regulations which are the subject of the current consultation. However, it would be remiss of the NASUWT not to comment on the deep dissatisfaction of teachers in Scotland with the proposal to close the STSS on 31 March next year, which has a normal pension age (NPA) of 60 or 65. The NASUWT is not in agreement with this, nor with the proposal to transition all teachers to the 2015 reformed scheme (the STPS) on 1 April next year, which has an NPA equivalent to the state pension age (SPA).

5. The NASUWT has always believed that the SPA is unacceptably high as an NPA for teachers and that the transition of all teachers to the STPS on 1 April 2022 will harm recruitment to, and retention in, the teaching profession, making it less attractive to remain as a teacher.
6. Moreover, it is fundamentally unfair that in Scotland, where life expectancy is lower than in England, the SPA is the same as in England, as is the NPA in the non-uniformed public service pension schemes in Scotland.
7. The NASUWT appreciates that it is HM Treasury policy that the NPA in non-uniformed public service pension schemes in Scotland is the SPA, and the Scottish Government has no control over this area of public servants' conditions of service in Scotland. However, the Union calls on the Scottish Government to clearly state to HM Treasury that this level of Treasury prescription is unjust and that the Scottish Government should be able to set its own pension age in the STPS and other public service pension schemes in Scotland.
8. The NASUWT believes that an NPA for teachers in Scotland that is fair to the teaching profession and to the taxpayer is 60.

SPECIFIC COMMENTS

Question 1 - Do you think the draft Regulations adequately ensure that the legacy pension schemes are closed to future accrual on 31 March 2022 and that all active pension scheme members are moved to the 2015 pension scheme from 1 April 2022? Do you think there are any errors or omissions in the draft in achieving this aim?

9. The NASUWT accepts that the Regulations fulfil the purpose for which they are intended. The SPPA will understand that the NASUWT is not in agreement with that purpose, for the reasons set out above.

Question 2 - Do you have any views on the proposed treatment of pension scheme members who have applied for ill health retirement before 31 March 2022 but who don't retire until on or after 1 April 2022? In particular, does this proposal in your view, ensure that these members are treated no less favourably than if the application was determined on 31 March 2022?

10. The NASUWT is in agreement with the SPPA's proposed treatment of pension scheme members who have applied for ill-health retirement on or before 31 March 2022 but who do not retire until on or after 1 April 2022.

11. In practical terms, teachers who would benefit from this treatment will be those for whom medical evidence can demonstrate permanent incapacity to the lower pension age in the legacy schemes, but would not be able to demonstrate permanent incapacity to the NPA in the reformed 2015 STPS. If teachers in this category apply for ill-health benefits on or before 31 March 2022, they may receive ill-health benefits which would be refused to them if they applied from 1 April 2022 onwards.

12. However, teachers for whom medical evidence can demonstrate permanent incapacity to the NPA in the reformed TPS, and for whom incapacity is total (leading to the awarding of Tier 2 enhanced benefits),

may receive a higher ill-health award by waiting until 1 April 2022 and applying for ill-health benefits then. This is because the level of enhancement may well be higher because Tier 2 benefits enhance half of prospective service to the NPA in the relevant scheme.

13. It is therefore vital that the SPPA adopts a communication strategy which makes this clear to prospective applicants for ill-health pensions, particularly as 31 March 2022 is only a few months away. Any prospective applicants should be advised by the SPPA to take regulated financial advice on the options available to them.

Question 3 - Do you have any views on the proposed treatment of additional contributions arrangements? In particular, do you agree that existing provisions in the regulations allow for arrangements on additional pension and added service entered into under the existing schemes to continue after 31st March 2022?

14. The NASUWT is in agreement with the SPPA's proposed treatment of additional contributions arrangements and agrees that existing provisions in the scheme regulations allow for additional pension and added service entered into under the existing schemes to continue after 31 March 2022.

Question 4 - Do the prospective Regulations in this consultation have an impact on people with protected characteristics, beyond those equality considerations undertaken and set out in the equalities impact analysis undertaken alongside this consultation and in support of the PSPJO Bill. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation. Specifically, do you think that the draft regulation amendments and policy intent described above will have any positive or negative impacts on people with protected characteristics, beyond those already considered? If so, which and why/why not?

15. The NASUWT has responded in detail to HM Treasury's consultation on the equality impact of the McCloud remedy. The NASUWT's view is that the McCloud remedy addresses the discriminatory nature of the transitional protections in public service pension schemes, but not the fundamentally discriminatory nature of the 2015 public service pension scheme reforms themselves. The reformed non-uniformed schemes are inherently discriminatory on grounds of age.

16. This is because the NPA in the non-uniformed schemes is the SPA, which is higher for younger teachers than for older teachers. Furthermore, older teachers are more likely to have higher levels of accrual in the legacy STSS, which they can take without actuarial reduction at age 60 or 65.

17. The discriminatory nature of the 2015 public service pension scheme reforms on grounds of age is compounded by HM Treasury's McCloud remedy, which excludes all teachers who began teaching on or after 1 April 2012, i.e. by definition all teachers who are in their twenties, together with many late entrants to the profession. This is not the case for teachers who began teaching before 1 April 2012, who can opt for their Teachers' Pension Scheme accrual during the McCloud remedy period to be in the legacy STSS with the lower pension age.

Question 5 - Are there any other areas that you think should be addressed in these regulations to ensure all members are moved to the 2015 Scheme and the differential treatment as identified by the Court of Appeal is ended?

18. As indicated above, the NASUWT is not in agreement with the movement of all scheme members to the 2015 scheme.

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